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SENATE BILL 2426
By Cooper

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 17, to enact the "Precious Metals and Stones Consumer Protection Act of 1996".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 17, is amended by adding Sections 2 through 10 of this act as a new part.

SECTION 2. This act shall be known and may be cited as the "Precious Metals and Stones Consumer Protection Act of 1996".

SECTION 3. Price comparison advertising is a form of advertising commonly used in the sale or offering for sale of precious metals and stones whereby current prices are compared with former or future prices or other stated values to demonstrate price reductions or cost savings. While price comparisons accurately reflecting market values in the trade area provide consumers with useful information in making value comparisons and market buying decisions, price comparisons based on arbitrary or inflated prices or values can only serve to deceive or mislead. Further abuse occurs when sellers fail to disclose material information essential to consumer understanding of the comparisons made.

The use of arbitrary or inflated price comparisons in violation of this rule as an inducement to the sale of precious metals and stones is injurious to both the consuming public and competitors, and is an unfair trade practice and unfair method of completion.

SECTION 4. As used in this act, unless the context otherwise requires:

(1) "Advertisement" includes includes any oral, written or graphic statement or representation made in connection with the solicitation of business in any manner for the purpose of soliciting a consumer in this state, by a seller and includes, without limitation because of enumeration, statements and representations but does not include price tags or in-store signs, or printed in any sales literature or brochure excepting catalogs. The terms "producer", "manufacturer", "wholesaler", "importer", or words of similar meaning means sellers that are engaged in resales; not sellers of products or services for consumer personal, family, or household use or consumption. No price comparison may be made by a seller for precious metal and stones at wholesale, wholesale prices, factory prices, or like. If the prices for the sale being offered are the net cost prices retailers usually and customarily pay when they buy said merchandise for resale sales may be termed net cost sales and in such event sellers may advertise cost prices providing the substantiation of said cost prices are maintained for six (6) months. In no event may retailers, in their departments that sell precious metals or stones, hold themselves nor their sale as wholesalers or as wholesale prices nor otherwise;

(2) "Consumer Property" means precious metals and stones sold primarily for personal, family, gifts or household use and not for resale or for use or consumption in a trade or business. For purposes of this act, "consumer property" includes merchandise;

(3) "Date", as applied to the date on which a price comparison is stated in the advertisement in newspapers or other printed publications, means either the date of publication or distribution or the date on which the completed advertising copy is submitted to the printer for final printing and publication, provided such submission date does not exceed thirty (30) days from date of actual publication or distribution;

(4) "Precious Metal" includes metals which are prized because of chemical and physical properties (notably resistance to corrosion, hardness, strength, and beauty) desirable in jewelry, coinage, and objects of art, and which are at the same time

relatively rare or inexpensive. Gold, silver, and the six metals of the platinum group are usually considered precious metals;

(5) "Precious Stones" includes one of the three (3) traditional categories of natural gemstones, the most valuable, as distinguished from semi-precious and decorative. Diamond, ruby, emerald, sapphire and pearl have long been considered "precious," but, in accordance with spiraling prices, alexandrite, black opal, cat's eye, demantoid and jadeite are included in this category;

(6) "Price Comparison" means the comparison, whether or not expressed wholly or in part in dollars, cents, fractions or percentages, in an advertisement, of a seller's current price for consumer property or services with any other price or statement of value for such property, whether or not such prices are actually stated in the advertisement; or, the making of price reductions claims or savings claims with respect to the seller's current price. The term shall include, but not be limited to, such comparisons as "fifty percent off", "up to seventy percent off", "save one-third", "half price" sale, "thirty percent to seventy percent off", "was twenty dollars, now half price", "ten dollar value, now eight dollars", "was seven dollars now six dollars", "list price fifty dollars our price twenty-nine dollars", "clearance price", or "liquidation price";

(7) "Sale" means a reduction from the seller's price at which consumer property is offered to the public for a fixed period of time; and

(8) "Seller" means a person engaged in the sale of consumer property and includes individuals, corporations, partnerships, associations and any other form of business organization or entity. The term shall not include banks, savings and loan associations, insurance companies, and public utilities.

SECTION 5. Any seller advertising products or services in this state for the purpose of soliciting a consumer in this state in which such advertisements are contained representations of statements as to any type of saving claims, including reduced price claims and comparative value claims, shall maintain, for six (6) months adequate records which disclose the factual

basis for such representations or statements and from which the validity of any such claims can be established.

SECTION 6. It shall be an unfair or deceptive act or practice for a seller to make any price comparison:

(1) based upon a price other than one (1) at which the consumer property was either sold or offered for sale by the seller or a competitor which is documented, or will be sold or offered for sale by the seller in the future, in the regular course of business in the trade area in which the price comparison is made;

(2) in which the consumer property materially differs in composition, grade or quality, style or design, model, name or brand, kind or variety, or service and performance characteristics, unless the general nature of the material differences is conspicuously disclosed in the advertisement with the price comparison; or the class of property being offered is similar to but is of superior quality grade; materials or draftsmanship than the consumer property to which the seller is comparing its product; or

(3) unless all the material price terms and conditions of any offer which is based upon the purchase of other merchandise or conspicuously disclosed. Such types of offers shall include, but are not limited to, "Free", "two for one", "two-fer", "half-price sale", "one cent sale", "fifty percent off", or other similar type of offer. No price comparison under this section may be made by a seller based on a price which exceeds his cost plus normal markup regularly used by him in the sale of such property, or consumer property or services of like kind.

SECTION 7. It shall be an unfair or deceptive act or practice for a seller to advertise or make any price comparison:

(1) based upon a price at which consumer property was sold by the seller unless:

(a) the price is a price at which such property was actually sold in substantial quantities by the seller in the last ninety (90) days immediately preceding the date on which the price comparison is stated in the advertisement; or

(b) the price is a price at which such property was actually sold in substantial quantities by the seller during any other period and the advertisement discloses with the price comparison the date, time or seasonal period when such sales were made;

(2) based upon a price at which the seller has actively advertised and offered for sale but has not sold consumer property unless:

(a) the price is a price at which such property was actually advertised and offered for sale by the seller for at least four (4) weeks during the last ninety (90) days immediately preceding the date on which the price comparison is stated in the advertisement; or

(b) the price is a price at which such property was actually advertised and offered for sale by the seller for at least four (4) weeks during any other ninety (90) day period, and the advertisement clearly discloses the date, time, or seasonal period of such offer;

(3) in which the seller represents that is conducting a "sale" unless:

(a) the termination date of the "sale" is clearly set forth in the advertisement; except that such disclosure shall not apply to "clearance", "closeouts", "permanent markdown", or "special purchases" with limited quantities and are advertised as such; and no such sale lasts more than seven (7) days; and

(b) the day after the "sale" ends, the consumer property reverts in price to the price charged by the seller for said item before the "sale" began or to a price which is higher than the "sale" price;

(4) referencing a higher price at which consumer property will be offered or sold in the future unless:

(a) the advertisement clearly discloses that the price comparison is based upon a future price increase no more than seven (7) days hence; and

(b) the future higher price increase takes effect on the date disclosed in the advertisement or, if not disclosed in the advertisement, within seven (7) days after the price comparison is stated in the advertisement, except where compliance becomes impossible because of circumstances beyond the seller's control;

(5) based upon advertised savings of a particular percentage or a range of percentages unless:

(a) the minimum percent reduction is clearly stated in the advertisement in the manner as conspicuously as the maximum percentage reduction, when applicable;

(b) the basis other than a regular price comparison for the advertised percentage reduction is clearly and conspicuously disclosed in the advertisement;

(6) based upon the use of the term "original" or "originally", to fail to disclose that intermediate markdowns have been taken, if such is the case. A seller may use the term "original" or "originally", when offering a reduction from an original price that was the price at which such consumer property was actually offered for sale in the recent, regular course of business. If the comparative price, identified as "original" or "originally", is not also the last previous selling price, that fact shall be disclosed, by stating the last previous selling price, e.g. "originally \$599.95, formerly \$499.95, now \$399.95" or indicating "intermediate markdown taken".

SECTION 8. It shall be an unfair or deceptive act or practice for a seller to make any price comparison:

(1) based upon a competitor's price unless:

(a) the competitor's price is either a price at which the competitor sold or advertised consumer property for sale at any time within the ninety (90) day period immediately preceding the date on which the price comparison is stated in the advertisement, or the date on which the completed advertising copy was submitted to the printer for final printing and publication, provided each submission date does not exceed eight (8) weeks from the date of actual publication or distribution;

(b) the competitor's price is a price that is representative of prices at which the consumer property is sold or advertised for sale in the trade area in which the price comparison is made and is not an isolated price;

(c) disclosure is made with the price comparison that the price used as a basis for the comparison was not the seller's own price and naming the competitor;

(2) based upon a "manufacturer's suggested price", "distributor's suggested price", "list price", "suggested retail" or any similar term implying a suggested or list price established by anyone other than the seller, unless either:

(a) the seller has actually offered and sold such consumer property for sale at the suggested price as its regular price; or

(b) the seller can substantiate that it is the actual price at which such consumer property as being offered for sale by representative retailers in the trade area in which the claim is made at any time within the ninety (90) day period immediately preceding either the date on which the price comparison is stated in the advertisement, the comparative price is for property of same composition, grade, or quality, style or design, model, name or brand, kind or variety, or the date on which the completed advertising copy was submitted to

the printer for final printing and publication, provided such submission date does not exceed eight (8) weeks from the date of actual publication or distribution.

SECTION 9. A price label or tag permanently imprinted on or affixed to consumer property or its container, by the manufacturer or supplier and not under control of the retail seller or instigated by him, or which is required to be attached of such property under federal law, need not be covered, obliterated or removed for purposes of compliance with this act, unless that item never actually sold by that advertiser at the labeled price in not insubstantial quantities on a substantial basis.

SECTION 10. Whoever violates the provisions of this act may be enjoined therefrom by an action brought by the attorney general, or any aggrieved party, and shall be punished by a fine of not less than five thousand dollars (\$5000) for each separate advertised infraction.

SECTION 11. This act shall take effect July 1, 1996, the public welfare requiring it.

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